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 \*May 22  
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HARRY DANLUCK (PLAINTIFF).....APPELLANT;

AND

MARTIN BIRKNER AND ANOTHER }  
 (DEFENDANTS) .....} RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Negligence—Injury to patron of betting establishment—Fall from second storey when trying to escape police raid—No stairway leading from doorway—Liability of occupier of premises—Question of patron being invitee not pertinent issue under circumstances—Patron bound to use reasonable care for own safety.*

The appellant was on the second floor of a building where "club rooms" were operated as a betting establishment. Sound of a buzzer indicated a police raid. The appellant became excited, ran to a screen door which was fastened by a hook, unhooked it, shoved it open and stepped out; and, since there was no stairway, he fell and suffered serious injuries. The appellant's action for damages was maintained by the trial judge; but the Court of Appeal held that the appellant could not recover, on the ground that he was on the premises, not lawfully, but for a criminal purpose, and that respondents owed him no duty that a court of justice would recognize to provide against such an emergency. Upon appeal to this Court,

*Held* that the judgment of the Court of Appeal should be affirmed but on different grounds than those upon which that Court proceeded. —Assuming that the appellant was an invitee upon the premises of the respondents and that a duty was owed to him by them, it was incumbent upon the appellant to use reasonable care for his own safety. The duty on the part of the respondents towards the appellant cannot be extended to include responsibility, in the circumstances surrounding the manner in which the appellant used the premises in making his exit.

APPEAL from the judgment of the Court of Appeal for Ontario (1), reversing a judgment of the Supreme Court of Ontario, Le Bel J. (2) and dismissing an action of the appellant for damages for injuries suffered in a fall from premises occupied by the respondents.

*J. A. Kennedy* for the appellant.

*G. A. Martin K.C.* and *Ralph Sweet* for the respondent.

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 \*PRESENT:—Rinfret C.J. and Kerwin, Taschereau, Kellock and Estey J.J.

(1) [1946] Ont. R. 427;  
 [1946] 3 D.L.R. 172.

(2) [1945] O.W.N. 822.

The judgment of the Court was delivered by

KELLOCK J.:—This appeal was dismissed on the hearing without calling upon counsel for the respondents but we intimated that we must not be taken as approving the grounds upon which the Court below proceeded. Assuming without deciding that Mr. Kennedy is right in his contention that the appellant was an invitee upon the premises of the respondents, and that they were under the duty toward him which that relationship cast upon them, it was incumbent upon the appellant to use reasonable care for his own safety.

On the alarm being given, the appellant, believing that a raid by the police was in progress, became excited, as did the other inmates, and in order to avoid arrest ran to the screen door which, according to the finding below, with which we agree, was fastened by a hook. The appellant unhooked the door, shoved it open and stepped out, apparently without looking, on the assumption that the door led to a stairway on the outside of the building of which the premises here in question form a part. There was a stairway on the outside of the building which the appellant had casually observed previously, but it did not lead to the door in question nor to any other door on that side of the building but to the rear of the upper part of the building on quite a different level. The appellant had never used the stairway in question and even if, as found by the learned trial judge, he was justified in believing that the doorway led to the stairway, we think that this action must fail. We do not think that the duty on the part of the respondents toward the appellant even as invitee can be extended to include responsibility in the circumstances surrounding the manner in which the appellant used the premises in making his exit. The appeal is dismissed with costs.

*Appeal dismissed with costs.*

Solicitor for the appellant: *J. A. Kennedy.*

Solicitor for the respondents: *Gerald McHugh.*

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DANLUCK

v.

BIRKNER  
ET AL.